Filed 11/21/16 P. v. Solorzano CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

REYNALDO SOLORZANO,

Defendant and Appellant.

2d Crim. No. B266478
(Super. Ct. No. 2012017177)
(Ventura County)

Reynaldo Solorzano appeals an order denying a petition for reduction of his firearm-theft conviction to a misdemeanor and for resentencing pursuant to Proposition 47, the "Safe Neighborhoods and Schools Act" ("Act"). (Pen. Code, § 1170.18.)[1] We conclude that the trial court did not abuse its discretion by determining that Solorzano poses an unreasonable risk of danger to public safety, and we affirm. (*Id.*, subds. (b)-(c).)

[1] All statutory references are to the Penal Code unless otherwise stated.

FACTUAL AND PROCEDURAL HISTORY

On August 2, 2012, the Ventura County prosecutor filed an information charging Solorzano with street terrorism, grand theft of a firearm, and dissuading a witness. (§§ 186.22, subd. (a), 487, subd. (d)(2), 136.1, subd. (b)(1).) The prosecutor also alleged that Solorzano suffered a prior felony strike conviction and served a prior prison term. (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667.5, subd. (b).) The 2012 criminal charges arose from Solorzano's theft of a firearm from his mother's residence. Solorzano and his brother entered the residence, took the firearm, two loaded magazines, and two computers, and later threatened his mother if she reported the crime.

On November 29, 2012, pursuant to a plea agreement, Solorzano pleaded guilty to street terrorism and grand theft of a firearm, and admitted the prior felony strike and prison term allegations. (§§ 186.22, subd. (a), 487, subd. (d)(2), 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667.5, subd. (b).) At sentencing, the trial court struck the felony strike and prison term allegations and reduced the street terrorism count to a misdemeanor. The court then sentenced Solorzano to the agreed-upon two year prison term; imposed a $240 restitution fine, a $240 parole revocation restitution fine (suspended), a $80 court security assessment, and a $60 criminal conviction assessment;

and awarded Solorzano 488 days presentence custody credit. (§§ 1202.4, subd. (b), 1202.45, 1465.8, subd. (a); Gov. Code, § 70373.)

On May 18, 2015, Solorzano filed a petition to recall his sentence, reduce his felony conviction to a misdemeanor, and resentence him pursuant to section 1170.18. The prosecutor opposed the petition, asserting that Solorzano poses an unreasonable risk of danger to public safety pursuant to section 1170.18, subdivisions (b) and (c).

On July 10 and 14, 2015, the trial court held an evidentiary hearing and received written and oral argument regarding Solorzano's petition. Evidence presented at the hearing included the following:

When Solorzano was 14 years old, he forced a disabled child to the ground and burned the child's hands and arms with a cigarette lighter, laughing as he inflicted the injuries. When Solorzano was 18 years old, he discharged a firearm at a person sitting in a motor vehicle, striking the man in the back. Five months following his release from prison for the underlying crime, Solorzano threatened to kill two undercover police officers in Las Vegas, Nevada; he shouted, "I'm going to mother fucking kill you," and simulated drawing a firearm. Solorzano became combative, and fought with the officers and four to six jail booking officers after his arrest. On July 15, 2014,

while attending a parole-mandated education program, Solorzano was arrested for being under the influence of methamphetamine. He resisted arrest and attempted to flee. Based upon his admissions and pleas, Solorzano suffered criminal convictions for each of the foregoing criminal offenses.

During his juvenile facility and prison confinements, Solorzano battered other inmates and also participated in gang-related riots. In addition, he violated his parole numerous times for absconding, failing to participate in drug testing, failing to report to supervision, and using methamphetamine and heroin.

Solorzano testified at the hearing and admitted that he has not participated in any drug treatment programs. He also stated that he is violent when he uses drugs.

The trial court determined that Solorzano's felony offense for grand theft of a firearm was now a misdemeanor pursuant to the Act because the value of the firearm was less than $950. The court denied Solorzano's petition, however, deciding that he presents an unreasonable risk of danger to public safety. In a thoughtful ruling, the court referred to Solorzano's prior crimes of burning a special needs child with a lighter, shooting the occupant of a motor vehicle in the back, participating in prison riots, threatening to kill two undercover Las Vegas, Nevada police officers, and committing battery on those police officers and other officers in Kern County, California.

The court also referred to Solorzano's admission that he is violent when he uses methamphetamine and noted Solorzano's failure to participate in drug rehabilitation despite many opportunities.

Solorzano appeals and contends that the trial court abused its discretion by denying his petition.

DISCUSSION

Solorzano argues that the trial court's decision rests upon an incorrect assumption that he would not be on parole if the court granted his resentencing petition. In its written ruling, the court stated, "[I]f resentenced and *released from parole supervision* [Solorzano] poses an unreasonable risk of committing a new violent crime namely homicide or attempted homicide . . . ." (Italics added.) Solorzano also contends that he cannot be found to present an unreasonable risk of danger to public safety unless he first suffers two serious or violent felony convictions. Finally, he asserts that the court's finding of dangerousness is faulty because he has not committed homicide or attempted homicide.

Pursuant to section 1170.18, subdivision (a), a person who is currently serving a sentence for a felony conviction that would have been a misdemeanor under the Act may petition the court that entered the judgment of conviction to recall the felony sentence and resentence the person as if he had been convicted of a misdemeanor. (*People v. Hall* (2016) 247 Cal.App.4th 1255, 1261; *People v. Hoffman* (2015) 241 Cal.App.4th 1304, 1308-

1309.) If the court determines that the petitioner satisfies the criteria of section 1170.18, subdivision (a), the court shall recall the felony sentence and resentence the petitioner to the misdemeanor sentence, "unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety." (§ 1170.18, subd. (b).) Thus, section 1170.18 provides a two-step process; first, the court must determine if the petitioner is eligible for resentencing, and then determine the factual issue whether he presents an unreasonable risk of danger to the public. (*Hall*, at p. 1261.)

Subdivision (c) of section 1170.18 defines the term "unreasonable risk of danger to public safety," and subdivision (b) sets forth the factors the court must consider in determining whether a new sentence would result in an unreasonable risk of danger to public safety. (*People v. Hall*, *supra*, 247 Cal.App.4th 1255, 1262 [finding of dangerousness where petitioner's recent crimes involved threat to use deadly force].) "Unreasonable risk of danger to public safety" means an unreasonable risk that the petitioner will commit "a new violent felony" within the meaning of section 667, subdivision (e)(2)(C)(iv). (§ 1170.18, subd. (c).) The felonies enumerated in section 667, subdivision (e)(2)(C)(iv)(I-VIII), referred to as "super-strike" offenses, ensure that the benefits of Proposition 47 do not apply to rapists, murderers, molesters, and the most dangerous criminals. (*People*

v. Hoffman, *supra*, 241 Cal.App.4th 1304, 1310.) The critical inquiry is not whether the risk is quantifiable, but whether the risk is unreasonable. (*Hall*, at p. 1262.)

In exercising its discretion, the trial court may consider: the petitioner's criminal conviction history, including the types of crimes committed, the injury to victims, the length of prison commitments, and the remoteness of the crimes; the petitioner's disciplinary record and record of rehabilitation while incarcerated; and any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety. (§ 1170.18, subd. (b); *People v. Hall*, *supra*, 247 Cal.App.4th 1255, 1262.)

The trial court properly applied the correct law in determining Solorzano's dangerousness. In a lengthy ruling, the court discussed section 1170.18 and the relevant considerations set forth there regarding dangerousness. Viewed as a whole, the ruling does not suggest that the court viewed Solorzano as a danger to public safety only if he was not on parole. Indeed, Solorzano committed many of his offenses either while incarcerated or on parole. Solorzano may not impeach the court's ruling by pointing to the phrase "[i]f resentenced and released from parole supervision." We presume the court understands and applies the law correctly. (*People v. Guerra* (2006) 37 Cal.4th

1067, 1101, overruled on other grounds by *People v. Rundle* (2008) 43 Cal.4th 76, 151; *Ross v. Superior Court* (1977) 19 Cal.3d 899, 913.)

We reject Solorzano's assertion that a person presents an unreasonable risk to public safety only if he has previously committed a super-strike offense or two or more serious or violent felonies. Super-strike offenders are already eliminated from eligibility for resentencing pursuant to section 1170.18, subdivision (i): "The provisions of this section shall not apply to persons who have one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 . . . ." Acceptance of Solorzano's argument renders section 1170.18, subdivisions (b) and (c) as "surplusage." (*People v. Hall*, *supra*, 247 Cal.App.4th 1255, 1266.) The general rule of statutory construction requires that statutes be construed to give effect to every provision and to avoid rendering any language superfluous. (*Ibid.*)

The order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J. TANGEMAN, J.

Patricia M. Murphy, Judge

Superior Court County of Ventura

Stephen P. Lipson, Public Defender, Ben Maserang, Senior Deputy Public Defender, for Defendant and Appellant.

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